IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4476 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMED HASANBHAI

Versus

DINESH MILLS LTD

Appearance:

MR DC RAVAL FOR MR MR ANAND for Petitioners

MR KS NANAVATI for Respondent No. 1 - Absent

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 16/02/2001

ORAL JUDGEMENT

1. The petitioners have challenged the decision of the Labour Court, Vadodara dated 4-5-1987 in Reference (L.C.V.) No. 543 of 1980 rejecting the Reference in which the petitioners had raised a demand that they should be reinstated in service since they were retired

before the due dates of their retirement.

2. By notice dated 20th February 1980, 31 workmen of the respondent - mill were given notice informing them that since they were completing 60 years of age, they were liable to retire from service w.e.f. 20th March 1980 and that, they should show cause as to why they should not be retired on that date. According to the petitioners, their services were being terminated in the name of retirement though most of them had not completed age of 60 years. Eleven of these employees made a grievance against the action of the respondent alleging that they were wrongfully retrenched and the said reference was made to the Labour Court, Vadodara. The Labour Court took into consideration the material which was placed before it and on the basis of the evidence on record, came to the conclusion that there was no evidence produced by these workmen showing the exact date of their birth. The Labour Court did not accept the oral version of Mahmmad Husen at exh.14 and the statement in the affidavit of others that they had produced certificates about their age before the Company. It was rightly observed that if there was a grain of truth in this statement, then these workmen could have produced another copy of such certificate about their age before the Court. It was also noticed that, in none of the three applications made in Form No.2 by workmen Mahmmad Husen, Arjunsinh and Surajsing Mangal, their date of birth was mentioned though there were columns about birth date, month and the year. The workmen had admitted that a meeting of their fare-well was arranged in which they remained present and were garlanded. They were presented with an alarm clock as a parting gift and a group photograph was taken. That group photograph was produced at exh.19. The Labour Court, after careful examination of the evidence on record, found that the Company had issued one month's notice before retiring the workmen, and during that period of one month, they had not objected against that notice. It was also found that a fare-well function was arranged for retiring the workmen and their services were appreciated by giving a gift which they accepted. The workmen also accepted the gratuity which was given to them. They raised a dispute only after three months from their retirement about their age of retirement. No workman has produced any certificate about his birth date. Thus, the workmen had quietly accepted the benefits of retirement and thereafter, raised a dispute. The Labour Court observed on the basis of the ratio of two decisions of Kerala High Court referred to in paragraphs 14 and 15 of its award that, having accepted the gratuity, the workmen were

estopped from contending that their retirement was premature and further that, attempts to correct the birth date at the fag end of their service, could not be accepted.

3. The decision of the Labour Court is based on the material which was adduced on record and there is absolutely no warrant for any interference with the well reasoned order of the Labour Court, which has been made in lawful exercise of its jurisdiction warranting no interference by the High Court in its writ jurisdiction. The petition is therefore rejected. Rule is discharged with no orders as to costs.

[R.K.ABICHANDANI, J.]

parmar*